

ENTERED

August 31, 2022

Nathan Ochsner, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

WALTER ALEXANDER SORTO,
Petitioner,

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v.

H-10-CV-613

BOBBY LUMPKIN, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,
Respondent.

ORDER

On September 30, 2015, this Court entered a Memorandum and Order denying Walter Alexander Sorto's federal habeas petition. (Docket Entry No. 47). Sorto's appeal remains pending before the Fifth Circuit. *Sorto v. Lumpkin*, 16-70005. In 2018, the Fifth Circuit ordered a limited remand for the sole purpose of deciding Sorto's entitlement to expert funding. *Sorto v. Davis*, 716 F. App'x 366 (5th Cir. 2018) ("Accordingly, we VACATE the district court's denials of funding and REMAND for its consideration of its denials of funding in light of *Ayestas*."). The Court subsequently granted funding under the standard articulated in *Ayestas v. Davis*, 138 S. Ct. 1080 (2018). On March 3, 2022, the Court entered an order advising the parties that the remand would be terminated upon the completion of the expert assessment. (Docket Entry No. 80).

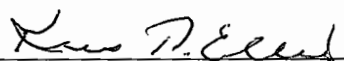
Respondent Bobby Lumpkin has filed another motion to terminate the remand. (Docket Entry No. 83). Since then, Sorto's expert has concluded his assessment and prepared a report. Sorto has recently submitted that report to the Court. (Docket Entry No. 86). The Court has limited authority under the mandate rule to consider the question of

funding. The Court can only consider the substance of the expert's assessment if the Fifth Circuit reopens the judgment denying habeas relief and remands the case.

Accordingly, the Court **GRANTS** Respondent's motion to terminate the remand. (Docket Entry No. 83). The Clerk will return this case to the Fifth Circuit.

The Clerk will provide copies of this Order to the parties.

SIGNED at Houston, Texas, on this 30th day of August, 2022.



KEITH P. ELLISON
United States District Judge